

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

MARY AGUILAR,

Plaintiff,

v.

CVS PHARMACY, INC. and  
EMERSON HEALTHCARE, LLC

Defendants.

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CASE NO. 3:23-CV-00972-K

**DEFENDANT EMERSON HEALTHCARE, LLC'S**  
**MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7.1 and 56.3, Defendant Emerson Healthcare, LLC moves for summary judgment on all claims asserted by Plaintiff, as further set forth below.

**SUMMARY**

Plaintiff Mary Aguilar seeks damages for personal injuries she alleges she sustained after using Sarna, an over-the-counter anti-itch lotion. Defendant Emerson Healthcare, LLC (“Emerson”) is the distributor of Sarna, and Defendant CVS Pharmacy, Inc. (“CVS”) is the retailer at which the Sarna used by Plaintiff was allegedly purchased. Plaintiff asserts claims of strict liability, negligence and gross negligence, breach of express and implied warranties, and DTPA violations against Emerson. *See* Pl. Orig. Pet. Plaintiff seeks to recover damages based on alleged personal injuries. *See* Pl. Orig. Pet. at 7–8.

Emerson moves for summary judgment on all of Plaintiff’s claims on two grounds. First, Emerson is a nonmanufacturing seller under Texas Civil Practice and Remedies Code, Section 82.003. As such, Emerson is not liable for any harm to Plaintiff caused by the subject product,

Sarna, because Emerson only distributed, and did not manufacture, Sarna. Second, Plaintiff's claims are time-barred in their entirety by the two-year statute of limitations applicable to Plaintiff's personal injury claims.

Accordingly, Emerson respectfully moves for summary judgment on all of Plaintiff's claims. A brief in support of this Motion is being filed contemporaneously with this Motion pursuant to Local Rule 7.1 and 56.5.

Dated: June 28, 2023.

Respectfully submitted,

/s/ Alan R. Vickery

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